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CONCORD, N.H.

1951

February 27

Dr. Hilton C. Buley,
Commissioner of Education,
State House
Concord, New Hampshire

Dear Dr. Buley:

Under date of February 19, 1951, you inquired if a school district may legally pay the tuition of pupils attending other than approved public schools or public academies, in view of the provisions of R.L.C. 138, s. 26, as amended by Laws of 1949, C. 139, s. 2. Our answer is no, without qualification.

The statute in question specifies:

"Any district not maintaining a high school or school of corresponding grade shall pay for the tuition of any pupil who with parents or guardian resides in said district or who, as a resident of said district, after full investigation by the state board of education is determined to be entitled to have his tuition paid by the district where he resides, and who attends an approved public high school or public school of corresponding grade in another district or an approved public academy."

The use of the phrase "public school" is now so well settled in our law as to preclude any possibility of private or parochial schools being included within that term. Tuition payments to enable attendance at parochial or private schools would clearly be illegal under this law, even in the absence of certain pertinent Constitutional considerations.

Our State Constitution, Part II, Article 83, contains the prohibition that "no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." The Constitutions of practically all of our sister states have similar provisions and our study of cases arising thereunder indicates that the courts have been unanimous in prohibiting the use of public funds to pay directly or indirectly tuition fees of pupils in sectarian schools. See Judd v. Board of Education, 278 N.Y. 200;

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them to make this state their home is indicated by registering as voters and expressing a present intention of remaining in the state. Therefore, it is my belief, on the basis of the facts presented, that a determination that both students have established their domicile in New Hampshire would be reasonable and just.

Very truly yours,

Gordon M. Tiffany
Attorney General

GGD:rm